



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

AMENDED DECISION

MRA/146598

PRELIMINARY RECITALS

Pursuant to a petition filed November 26, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Waukesha County Health and Human Services in regard to Medical Assistance, a hearing was held on February 14, 2013, at Waukesha, Wisconsin. A decision was issued on April 1, 2013 that declined to increase the community spouse income allocation (CSIA). Petitioner filed a rehearing alleging an error in the calculation of income as she is a teacher. That was granted. Petitioner did submit some additional documentary evidence. No new hearing is needed or has been conducted.

This decision completely replaces the decision issued on April 1, 2013.

The issue remains the same - whether Petitioner's community spouse's income allocation may be increased (thus reducing Petitioner's patient liability).

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Lori Rutzinski

Waukesha County Health and Human Services
500 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. Petitioner has a community spouse. Petitioner seeks an increase in her community spouse income allocation.
3. Petitioner's gross income was \$3239.33 at the time of this appeal.
4. Petitioner's community spouse's gross monthly income was \$41,070 annually of \$3422.50 per month. She also received a Social Security benefit of \$504.00 through June 30, 2013 (discontinued at that point as her daughter is age 16); thus her total income was \$3927.00 through June 30, 2013 but was reduced to \$3423 from July 1, 2013 forward.
5. Petitioner and spouse have two children, one age 18 or older and one under 18.
6. Petitioner and his community spouse requested this hearing seeking an increase in the CSIA. The community spouse claims the following monthly expenses:

Bills

car insurance	\$88
gasoline	\$130
vehicle maintenance	\$83
UW tuition for son	\$917
Mt. Mary tuition-	
comm spouse	\$667
food	\$500
mortgage	\$1285
property taxes	\$500
cable, phone & internet	\$188
cell phone	\$130
electric	\$180
homeowner's insurance	\$69
health insurance	\$45.35
life insurance	\$33.00
income taxes	\$798

7. Petitioner's spouse has not submitted an actual monthly budget, rather documents with the above information in annual amounts. The undersigned converted them to monthly sums rounded to the nearest dollar. These expenses total \$5613.35.
8. As of July 1, 2013, Petitioner's expenses will increase by \$264.39 because she will have a pension contribution deducted from her paycheck.
9. Petitioner and spouse seek to have enough of Petitioner's income allocated to the community spouse to pay the expenses noted.
10. The maximum community spouse income allocation (CSIA) available without a hearing at the time of Petitioner's institutionalization was the lesser of \$2841.00 or \$2521.67 plus shelter costs in excess of \$756.50. As Petitioner's shelter expenses are well above \$756.50 (mortgage and taxes alone = \$1785) the maximum CSIA here is \$2841.00.
11. Petitioner's daughter is under 18, a dependent and receives Social Security of \$504. Thus she has a dependent family member income allocation of \$126.42 (\$630.42 minus \$504).

12. Petitioner's cost of care contribution has been \$3067.91. The agency arrived at this by subtracting \$126.42 for the daughter's dependent family member income allocation and, again, the \$45 personal allowance from petitioner's income of \$3239.33. The agency is prohibited from allocating more than the community spouse income allowance (\$2841.00 in this case) to a community spouse and, as her income is in excess of this figure, there was no community spouse income allocation made here by the agency.

DISCUSSION

Medical assistance rules require institutionalized persons to "apply their available income toward the cost of their care." *Wis. Admin. Code § DHS 103.07(1)(d)*. However, both Wisconsin and federal medical assistance laws contain provisions that grant an allowance to the spouse of an institutionalized person so that she does not fall into poverty. *See Wis. Stat. § 49.455 and 42 U.S.C. § 13964-5*; also see *Medicaid Eligibility Manual (MEH), §18.1*. An institutionalized person may allocate some of his/her income to the community spouse. *MEH, §18.6.1*. The minimum monthly maintenance needs allowance (MMMNA) currently is the lesser of \$2,841 or \$2,521.67 plus excess shelter costs. *Medical Eligibility Handbook (MEH), § 18.6.2*. Excess shelter costs are shelter costs above \$756.50. *Id.*

Administrative law judges (ALJs) have the authority to increase the CSIA above the MMMNA where the MMMNA is insufficient to meet a particular community spouse's *basic* maintenance needs. *Wis. Stat. §49.455(8)(c); Wis. Admin. Code §DHS 103.075(8)(c); Medicaid Eligibility Handbook 18.6*. However, an increase in the CSIA above the MMMNA can be made through the fair hearing process only if it is established that the community spouse requires income above the level provided by the MMMNA due to the existence of "exceptional circumstances resulting in financial duress" for the community spouse. *Wis. Stat. §49.455(8) (c)*. Further, "... exceptional circumstances resulting in financial duress" means situations that result in the community spouse not being able to provide for his or her own necessary and basic maintenance needs". *Wis. Admin. Code §DHS 103.075(8)(c)*.

Thus the standard to be applied by the Division of Hearings and Appeals in making a determination as to whether the CSIA may be increased is whether leaving the CSIA at the standard limit will result in financial distress for the community spouse such that the community spouse is unable to meet necessary and basic maintenance needs. Based on this criterion, I have reviewed the expenses noted at Finding # 6 and have concerns and adjustments to make:

- Petitioner's community spouse notes \$188 and \$130 monthly expenses for phone and cell phone. These are not expenses that can be supported under the necessary and basic maintenance needs. I note that the FoodShare (f/k/a Food Stamp) program allows \$28.00 as a standard telephone deduction. *FoodShare Eligibility Handbook (FSH), Appendix 8.1.3*. I am, therefore, going to limit the deduction to that \$28.00 amount, a reduction of \$290.00 (\$188 + 130= \$318-28).
- Tuition is beyond a basic maintenance item and I cannot include those expenses so am deducting \$1584 from the claimed expenses. (Though not precedential other DHA decisions are persuasive; See DHA case # MRA-37/102831, issued 4/22/09).

Thus I am reducing the amount of the requested increase by \$1874.00. This makes allowable expenses, \$3799.35 (\$5613.35-1874). As the community spouse income is in excess of that figure through June 30, 2013 the Division of Hearings and Appeals cannot order Petitioner's income be allocated to the community spouse through that date.

As of July 1, 2013, however, the community spouse's income is decreased to \$3423 and allowed expenses increase by \$264.39 to \$4063.74. As of July 1, 2013 then, the community spouse income falls \$640.74 under the allowed expenses of \$4063.74. Thus, as of July 1, 2013, \$640.74 of Petitioner's income is to be allocated to the community spouse.

CONCLUSIONS OF LAW

1. That the evidence does not demonstrate that Petitioner's community spouse is eligible for an increase in the community spouse income allowance prior to June 30, 2013 because her basic maintenance expenses have not been shown to exceed her individual gross income through June 30, 2013.
2. That, as of July 1, 2013, Petitioner's community spouse is eligible for a community spouse income allocation from Petitioner's income in the amount of \$640.74 per month because her basic maintenance expenses have been shown to exceed her individual gross income as of that date.

NOW, THEREFORE, it is

ORDERED

That the matter be remanded to the county agency with instructions to add \$640.74 per month to the community spouse income allowance effective July 1, 2013. The county agency must take these steps within 10 days of the date of his Order.

In all other respects, the appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

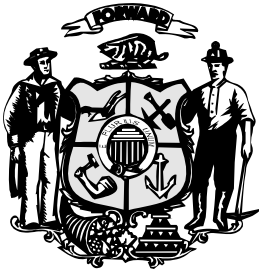
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 2nd day of August, 2013

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on August 2, 2013.

Waukesha County Health and Human Services
Division of Health Care Access and Accountability